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Application No. : 10/805,777 Confirmation No.: 9934
Applicant(s) : Lee H. Angros
Filed : 03/22/2004
TC/AU : 1743
Examiner : Lyle Alexander
Title : ANALYTIC PLATE WITH CONTAINMENT BORDER AND METHOD

Docket No. : 233.032
Customer No. : 30589

Mail Stop AF
Commissioner for Patents
P.O. Box 1450
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PRE-APPEAL BRIEF REQUEST FOR REVIEW AND NOTICE OF APPEAL

Applicant hereby requests review of the final rejection in the above-identified application. No amendments are being filed with this request. This request is being filed with a notice of appeal.

Respectfully submitted,

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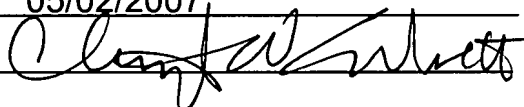
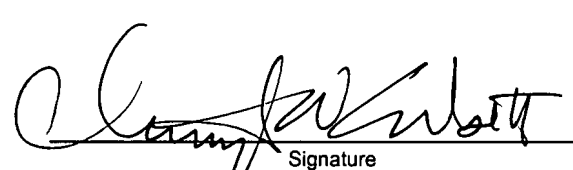


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PRE-APPEAL BRIEF REQUEST FOR REVIEW		Docket Number (Optional) 233.032	
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		First Named Inventor Lee H. Angros	
		Art Unit 1743	Examiner Lyle Alexander
<p>Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.</p> <p>This request is being filed with a notice of appeal.</p> <p>The review is requested for the reason(s) stated on the attached sheet(s). Note: No more than five (5) pages may be provided.</p> <p>I am the</p> <p><input type="checkbox"/> applicant/inventor.</p> <p><input type="checkbox"/> assignee of record of the entire interest. See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed. (Form PTO/SB/96)</p> <p><input checked="" type="checkbox"/> attorney or agent of record. Registration number <u>36,109</u></p> <p><input type="checkbox"/> attorney or agent acting under 37 CFR 1.34. Registration number if acting under 37 CFR 1.34 _____</p> <p> Signature Christopher W. Corbett Typed or printed name</p> <p><u>405-607-8600</u> Telephone number</p> <p><u>05/02/2007</u> Date</p> <p>NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required. Submit multiple forms if more than one signature is required, see below*.</p> <p><input type="checkbox"/> *Total of _____ forms are submitted.</p>			

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REASONS FOR PRE-APPEAL BRIEF REVIEW



The present application claims (e.g., see claim 83) an applicator device for applying a liquid coating to an analytic plate. The applicator device comprises (1) a body, (2) a reservoir within and integral to the body (and containing a transparent silane composition), and (3) an applicator end.

The applicator end further comprises an absorbent material which when pressed against an analytic plate has no gap between the applicator end and the analytic plate and which applies a thickness of the composition of less than 0.0001 inch.

The claims have been rejected under 35 U.S.C. §102(b) over U.S. 4,855,201 and under 35 U.S.C. §103(a) over U.S. 4,521,621 (see pages 2-4 of the Official Action mailed January 8, 2007).

The particularly cited teaching in both of these references is a "Bird Applicator". The examiner asserts that the Bird applicator of the '201 patent or the '621 patent either anticipates or renders obvious the applicator device of the present claims.

Applicant traverses these rejections and asserts that they are unfounded on the basis that the rejections contain clear errors in facts and errors of omission.

The pending Official Action of January 8, 2007 was mailed pursuant to an Amendment and Response and Request for Continued Examination filed on October 18, 2006, which also includes a Declaration by Applicant, Lee Angros.

The errors in facts or omissions in this rejection are at least 7-fold:

- (1) The rejection completely ignores (i.e., omits reference to) the presently claimed feature that there is no gap between the applicator end and the analytic plate when the applicator device is applied to the analytic plate. In fact, this feature of the invention is completely contrary to the construction of a Bird applicator which

is absolutely dependent upon the presence of a gap between the applicator end and the surface to which the Bird applicator is applied.

In the Bird applicator, it is the “gap” which is the functionally important component of the “applicator end” because the thickness of the coating on the surface is dependent on the thickness of the gap.

In the applicator of the present invention, there is no “gap” between the applicator end of the device and the surface.

- (2) The rejection does not address that aspect of the claims which states that the applicator end has an absorbent material on a portion thereof which contacts the analytic plate.” The rejection is confusing in that it asserts that the “portion of the applicator which does not touch the surface could be made from plastic”. However, in the present claim the absorbent material of the applicator end does touch the surface.
- (3) The rejection does not address the presently claimed feature that the body of the applicator device has a reservoir which contains the solvent composition. In fact, Bird applicators do not have reservoirs which are integral to the body. When a Bird applicator is used, the liquid composition which is to be spread by the Bird applicator is first deposited upon the surface to be coated, then the Bird applicator is touched to the edge of the liquid, and the liquid is held to the Bird applicator by capillary action and spread by pulling the Bird applicator across the surface. The liquid composition is not contained within the Bird applicator.

The rejections omit and do not recognize this important difference between the present invention and the cited references.

- (4) In the rejection it is stated that the Bird applicator could be made from materials such as plastic.

"It would have been desirable to make the elements of the bird application [sic] that are not contacting the surface could be made out of less expensive, light weight materials such as a plastic" (last paragraph, page 2, and last paragraph, page 3, Office Action mailed 01/08/2007).

This assertion is factually incorrect. A Bird applicator is nothing more than a metal bar which has been milled to have a portion having a narrow gap on the lower side thereof. Bird applicators are not made from plastic or other such materials because it is critical that the milled edge of the gap be maintained at a substantially exact tolerance, such as 12.5 μm (see the Angros Declaration, paragraphs 4-7). A device made from plastic or other soft material could be easily nicked, scratched or worn down, thereby quickly ruining the gap edge of such an applicator (Angros Declaration, paragraphs 4-7). Bird applicators are always made from metal. The examiner's assertions contrary to this are not factually correct.

- (5) In the examiner's "Response to Arguments" (page 4, Office Action of 01/08/2007) it is stated that "the claimed language of "absorbent material" is sufficiently broad to read on just about any material of construction because metals are absorbent to some materials." Applicant respectfully asserts that this statement stretches the bounds of credulity, is absurd on its face, and simply

cannot be allowed to stand as a "statement of fact" by the examiner.

Clearly, any person of ordinary skill in the art understands what is meant by "absorbent material".

In fact, a Bird applicator is made from metal because metals such as steel, nickel, chrome, and aluminum do not absorb the liquids which they are used to spread, such as ink. If indeed there was an absorbent metal, it would not be used in the construction of a Bird applicator because a Bird applicator must be non-absorbent in order to function properly (i.e., spread a consistently even coating, e.g., 12.5 μm on a surface).

Clearly, examiner's statement is factually incorrect. At best, he is confusing "adsorbance" with "absorbance".

- (6) In the "Response to Arguments" in the Rejection of 01/08/2007, the examiner referred to Attachments 1-4 of the Declaration filed October 18, 2006 which described various Bird applicators. The examiner stated:

"These attachments provide information and specifications of "Bird" applicators. However, these attachments do not claim to show the exact "Bird" applicators of the cited prior art. In the absence of showing the "Bird" applicators of the cited prior art, it is difficult to draw any conclusions and these attachments were not convincing to overcome the art of record".

With such an assertion, the examiner here has set a requirement which is impossible to achieve and is thus arbitrary and unreasonable. It would be impossible for the applicant (or the PTO) to provide exact copies of the Bird applicators used in the cited references ('201 and '621). The point of the Angros

Declaration was to demonstrate that Bird-type applicators are standard and common technical devices made from metal with great precision and to very narrow tolerances. Examiner's assertion that the Bird applicators of the '201 and '621 references are not similar in construction to those discussed Attachments 1-4 of the Declaration is again factually incorrect. All evidence points to the fact that the Bird applicators of '201 and '621 are typical Bird applicators comprising metal bars, such as those shown in Attachments 1-4. The examiner has provided no reasonable explanation or evidence that the Bird applicators of '201 and '621 would be different from standard, commercially-available Bird applicators.

Examiner further states in the Rejection that the 3 pages of the Declaration merely "are the opinion of Mr. Angros and have been given the appropriate weight." Application respectfully asserts that the remarks in the Declaration are not mere "opinion" in light of the factual evidence provided in Attachments 1-4 which factually support with evidence the assertions and remarks made in the Angros Declaration.

- (7) The rejection states "Yanus et al. are silent to the claimed "constructed of a material which is different from a material used to construct the body" (page 2, paragraph 4, Official Action of January 8, 2007). However, this feature no longer included in the claims thus the citation of In re Larsen (144 USPQ 347) appears to be irrelevant to the present issues.